

ATTORNEY DOCKET NO. 10813ABUS02C (NORT10-00385)
U.S. SERIAL NO. 10/808,724
PATENT

REMARKS

Claims 37-58 are pending in the application.

Claims 37-58 have been rejected.

No Claims have been amended, and reconsideration is respectfully requested.

I. DOUBLE PATENTING REJECTION

Claims 37-42, 43-48, 49-54, 55 and 56 were rejected on the grounds of non-statutory double patenting over various claims in U.S. Patent No. 6,751,198. The rejection is respectfully traversed. Applicant notes the Examiner's indication that this rejection will be in all future correspondence until resolved, and Applicant is prepared to submit a timely and proper terminal disclaimer when this rejection is the only remaining rejection of the claims, should that be necessary in light of the final state of the otherwise-allowed claims.

II. REJECTION UNDER 35 U.S.C. § 103

Claims 37-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,322,793 to Andersson et al, hereinafter "Andersson" in view of U.S. Patent No. 5,633,861 to Hanson et al, hereinafter "Hanson". The Applicant respectfully traverses the rejection.

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. (In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). See also In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984)). It is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. (Id. at 1073, 5 USPQ2d at 1598). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (In

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re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

Absent such a prima facie case, the applicant is under no obligation to produce evidence of nonobviousness. MPEP § 2142, p. 2100-125 (8th ed. rev. 5, August 2006). To establish a prima facie case of obviousness, three basic criteria must be met: *Id.* First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *Id.* Second, there must be a reasonable expectation of success. *Id.* Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *Id.*

The Office Action argues that Andersson discloses all elements of independent Claims 37, 43, 49 and 55, except for monitoring a delay time of the network. Applicant respectfully disagrees and submits that Andersson does not disclose the other elements recited in the independent Claims, as well.

The Office Action cites to Col. 5, line 60 through Col. 6, line 60 and Col. 13, lines 29-45 (and Figures 1 and 2) of Andersson as disclosing Applicant's "timer" and "processor operable for setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, and for reading a receive bit in a received packet and stopping the timer when the receive bit is read" as set forth in independent Claim 37.¹ For ease of reference, these two cited passages of Andersson are set forth below in their entirety:

.... The "Adapter Enabled" bit, when on, brings the BA into the idle state from which all normal functions are started. When off, it puts the BA in a state where it does not react to any activity on the PIO BUS. Trap requests are degated. For testing of the PIO BUS, the off condition is used to keep the BA hardware inactive and allow the microcode to have complete

¹ The Office Action cites to these same passages with respect to independent Claims 43 (method), 49 (system) and 55 (network device).

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control over all activity on that bus. The "Interval Timer Enable" bit, when on, enables interval timer traps. When off, it does not allow any interval timer trap to occur. This bit also resets any interval timer trap condition which may be present. The "Address Extension Enable" bit, when off, allows the BA to only address adapters on the PIO Bus in address range 0-7 during Interrupt Response Mode (IRM). When on, it extends the address capability to a maximum of 16 addressable adapters. . . . (Col. 5, line 60 through Col. 6, line 61)

The ICA Start/Stop (S/S) Line Control Facility provides a link between the Channel Service Facility and the function of the Common Communications Adapter (CCA) in controlling asynchronous lines.

As previously stated, in asynchronous line control, the Start/Stop Line Control Facility provides a link to the Common Communications Adapter (CCA) 11 at the front end of ICA. For Start/Stop operations, the CCAs serialize/deserialize a byte, buffer one data byte, control the attached data communications equipment (DCE) and sense DCE conditions, establish transmit and receive bit timing, perform interval timer functions in accordance with the ICC, append Start and Stop bits onto transmitted bytes, test each received byte for a valid Stop bit and for odd parity, remove Start and Stop bits from each byte received, test each byte received for an all zero condition and indicate when a Break sequence is being received, and transmit a continuous zero bit pattern as a Break sequence. (Col. 13, lines 29-47).

As noted in Applicant's prior response, nothing in the above cited portions of Andersson discloses or describes (1) setting a transmit bit in an outgoing packet and starting a timer when the transmit bit is set, or (2) reading a receive bit in a received packet and stopping the timer when the receive bit is read. Nor does Hanson, or any other art of record, alone or in combination, teach or suggest these features.

Andersson is directed to a communications controller for a data processing system where the entire communications controller is transparently integrated into the host CPU. Andersson, Col. 1, lines 8-10, 35-37. The Office Action asserts that Col. 13, lines 29-45 describe that "start/stop operations are performed based on transmit and receive bits within a byte" and that the "stop bit in the received byte is read to stop the timer accordingly." Office Action, page 3.

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To the contrary, this portion of Andersson merely discloses that for "Start/Stop" operations, the CCAs (Common Communication Adapters) establish transmit and receive bit timing, perform interval timer functions in accordance with ICC, append Start and Stop bits onto transmitted bytes, and test each received byte for a valid Stop bit. Andersson, Col. 13, lines 36-44. The Office Action fails to cite to any portion of Andersson which explains or describes that the CCA starts a timer when a transmit bit is set in an outgoing packet and reads a received bit in a received packet and stops the timer in response thereto. Andersson merely describes that the CCA "perform[s] interval timer functions in accordance with ICC" or "test[s] each received byte for a valid Stop bit." Moreover, the reference in Andersson to "establish bit transmit and receive bit timing" and "append Start and Stop bits onto transmitted bytes" appear to refer to establishing bit timing for bits since the link to the CCA is an asynchronous line. Andersson, Col. 13, lines 29-35. In addition, it appears that the "Start/Stop operations" are identifying starting and stopping points for each transmitted byte and/or for starting and stopping the CCA's data communications.² Andersson, Col. 13, lines 27 through Col. 16.

Nothing in the cited portions of Andersson discloses or describes the recited outgoing packet is sent to a network and the recited received packet is received from a network. The cited portions of Andersson fail to teach or suggest significant limitations of independent Claims 37, 49 and 55 (and their dependent Claims), as alleged by the Examiner. In addition, the cited portions of Andersson fail to describe or disclose a transmitting state machine or a receiving state machine as recited in independent Claim 43 (and its dependent Claims).

Applicant respectfully submits that any combination Andersson, Hanson, or any other art of record fails to disclose the elements noted above as recited in independent Claim 37 (and the

² Notably, Andersson is not even remotely related to measuring round trip delay of voice packets in a network.

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other independent Claims). The Examiner's characterizations of Andersson are incorrect, and the cited portions of Hanson do not cure this deficiency.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 103(a) rejection of Claims 37, 38, 40-44, 46-53, 55 and 57.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

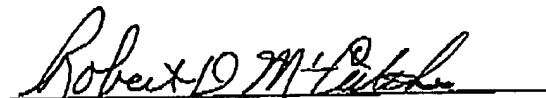
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,
MUNCK CARTER, LLP

Date: _____

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